



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
21 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0021

PATRICK C. KELIHER
COMMISSIONER

August 20, 2020

Julie Hewitt
Office of Budget and Management
725 17th Street, NW
Washington, DC 20503
Julie.A.Hewitt@omb.eop.gov

Dear Ms. Hewitt,

The Maine Department of Marine Resources (ME DMR) is requesting a meeting with appropriate staff within the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget regarding its pending review of proposed rule “Atlantic Large Whale Take Reduction Plan Modifications to Reduce Serious Injury and Mortality of Large Whales in Commercial Trap/Pot Fisheries Along the U.S. East Coast (RIN 0648-BJ09).” This regulation would amend the Atlantic Large Whale Take Reduction Plan and includes a proposal from ME DMR to address the risk of right whale entanglement in Maine waters.

At the April 2019 Atlantic Large Whale Take Reduction Team (ALWTRT) meeting, ME DMR was charged with reducing the risk of North Atlantic right whale entanglement in Maine’s portion of Lobster Conservation Management Area (LCMA) 1. Although a right whale entanglement in Maine lobster gear has not been documented since 2004, ME DMR acknowledged that right whales transit through the Gulf of Maine and vertical lines in overlapping areas pose some level of risk. Over the next few months, ME DMR staff developed an assessment tool to evaluate the risk reduction of various management measures in the Maine lobster fishery. ME DMR also participated in, or hosted, over 20 industry meetings to gather fishermen’s input on a suite of measures which would reduce the risk of right whale entanglement while also ensuring safety at sea and an economically viable lobster fishery. Further, ME DMR worked extensively with industry to both understand vertical line loads under current operations in the fishery as well as to develop potential gear modifications that will ensure vertical lines break at 1,700 pounds, a value which scientific literature shows significantly reduces life threatening entanglements for large whales.

The culmination of this work was the ME DMR proposal submitted to NOAA Fisheries in December 2019. This proposal not only reduces the number of vertical lines in the lobster fishery but weakens all remaining lines, including those shoreward of the ALWTRT exemption line. The proposal also considers the spatial variability of entanglement risk in Maine’s coastal waters and accordingly proposes higher levels of trawling up (the number of traps on a trawl) in areas where right whales are most likely to be. This means that areas with the highest level of entanglement risk are subject to the strictest measures.

Importantly, this suite of measures, which achieves additional protection for right whales, has been crafted to minimize economic impacts to the lobster fishery. The lobster fishery is the economic

backbone of Maine's coastal communities and the most valuable single-species fishery in the United States. The ex-vessel value of the Maine lobster fishery in 2019 was \$485 million dollars and it is estimated that the associated supply chain has an economic impact of \$1 billion annually. The lobster fishery not only includes license holders, but it also supports crew members, bait dealers, trap builders, boat builders, dealers and processors, and countless restaurant and tourism industries. A key success of the Maine proposal is that it identifies management measures that can be implemented to provide greater protections to right whales without sacrificing seasonal or regional flexibility in the fishery, as such measures would undoubtedly have a greater adverse economic impact on this important fishery.

We are aware that NOAA Fisheries may not think that the ME DMR proposal goes far enough. Specifically, on January 10th ME DMR received a letter from the Greater Atlantic Regional Fisheries Office (GARFO) Regional Administrator that ME DMR's plan only achieved a 52% risk reduction and therefore fell short of the ALWTRT target of a 60% reduction. In our view, this response indicated that a thorough review and analysis of ME DMR's proposal had not yet occurred at that time. The ME DMR proposal clearly states on page 17 that measures proposed seaward of the exemption line are expected to result in a 52% risk reduction; however, additional measures proposed by ME DMR shoreward of the exemption line are not included in the calculation of risk reduction and should result in a higher risk reduction percentage, and meet the target risk reduction established by NOAA Fisheries. ME DMR responded to NOAA Fisheries on February 12th highlighting this point but has received no additional communication from the agency on this topic to date.

If NOAA Fisheries believes ME DMR's proposal is insufficient, we are concerned that area closures, which were discussed by GARFO staff prior to ME DMR submitting its proposal, will be added on top of the suite of measures included in the proposed rule. Area closures are not a panacea for right whale protection and can often result in unforeseen consequences. Specifically, the efficacy of area closures is predicated on an assumption that gear from these areas will be brought back to shore. While this is a true assumption for the existing Cape Cod Bay closure, this assumption does not hold for waters further off the coast of Maine which support a year-round lobster fishery. Instead, the likely result of area closures in these waters will be that gear is moved to adjacent areas, creating aggregations of vertical lines around areas intended to protect whales. The result is that the risk to right whales is displaced from one area to another, and potentially even exacerbated, rather than being removed.

One of the closures plotted by NOAA Fisheries' Northeast Fisheries Science Center staff, and shared with ME DMR, extended a LCMA 3 closure into Maine's portion of LCMA 1, covering extensive portions of the offshore regions of Maine Lobster Zones B, C, and D. These lobster zones are among the most productive and lucrative areas in the Maine lobster fishery. Specifically, outside of 12 miles from shore, these three zones produced over \$14 million in ex-vessel value in 2019, representing 53% of the revenue generated outside of 12 miles from shore for the entire State of Maine. Approximately 3,300 trips were taken in this offshore region of Zones B, C, and D in 2019. Another potential closure, which was first presented to the ALWTRT as an example management measure, focused on waters along the LCMA 1/3 boundary in October and November starting near Jeffrey's Ledge. October and November make up 29% of Maine's total revenue generated outside of 12 miles from shore and account for 20% of trips taken in this region; Zones F and G, specifically contribute 10% of that revenue and 15% of those trips.

Finally, although ME DMR submitted its proposal eight months ago, we continue to work with industry to develop regional conservation equivalency plans which achieve the same level of risk reduction, or greater, as the measures included in the statewide plan. As outlined in our proposal to NOAA Fisheries,

the flexibility for these regional conservation equivalency plans is needed due to the very different fishing conditions along Maine's extensive coast, including differences in tides, bottom type, and vessel traffic. We hope to submit these regional conservation equivalency plans to NOAA Fisheries as a part of our comments on the upcoming proposed rule.

ME DMR appreciates OIRA's attention and consideration of these issues. We have attached our full proposal to NOAA Fisheries which includes rationale for the management measures included, analysis to support the use of those measures, and information on the economic importance of the fishery to Maine.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick C. Keliher", written in a cursive style.

Patrick C. Keliher
Commissioner